

12 MISCELLANEOUS PROVISIONS

(a) *Binding Acceptance.* This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns.

(b) *Severability.* If any term, condition, or provision of this Agreement shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. If the terms of this Agreement are materially altered due to changes in governing law, then the parties shall negotiate in good faith to reconstitute this Agreement in a form that, to the maximum extent possible, is consistent with the original intent of Grantee and the County and preserves the benefits bargained for by each party.

(c) *Preemption.* In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Agreement, then the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required by law. In the event that any provision of this Agreement is preempted or enforcement limited by any such provision of federal or state law, then the parties shall negotiate in good faith to reconstitute this Agreement in a form that, to the maximum extent possible, is consistent with the original intent of the Grantee and the County and preserves the benefits bargained for by each party. Finally, in the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the County.

(d) *Equal Treatment.* The County shall comply with all state and federal laws regarding equal treatment of the Grantee and other entities.

(e) *Compliance With Applicable Laws.* The Grantee shall, at all times during the term of this Franchise Agreement, including any extensions thereof, substantially comply with all applicable and material federal, state, and local laws and regulations.

(f) *Force Majeure.* Notwithstanding any other provision of this Agreement, the Grantee shall not be liable for delay in performance of, or failure to perform, in whole or in part, its obligations pursuant to this Agreement due, directly or indirectly, to severe or unusual weather conditions, strike, labor disturbance, lockout, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, action or inaction of any government instrumentality or public utility including condemnation, accidents for which Grantee is not primarily responsible, fire, flood or other act of God, sabotage or other events to the extent that such causes or other events are beyond the reasonable control of the Grantee. In the event that any such delay in performance or failure to perform affects only part of the Grantee's capacity to perform, the Grantee shall perform to the maximum extent it is able to perform and shall take all reasonable steps within its power to correct such cause(s) in as expeditious a manner as possible.

(g) *Governing Law.* This Franchise Agreement shall be governed in all respects by the law of the Commonwealth of Virginia.

(h) *Notices.* Unless otherwise provided by applicable law or this Agreement, all notices or other written communications required to be given to the County under any provision of this Agreement or the Fairfax County Code shall be deemed served when regularly mailed,

postage prepaid or delivered by hand in writing to the Communications Administrator. All notices or written communications required to be given to the Grantee under any provision of this Agreement or the Fairfax County Code shall be deemed served when regularly mailed, postage prepaid or delivered by hand in writing to the Grantee at the Grantee's last known address, to the attention of its President, with a copy to George L. Mahoney, Esquire, Media General, Inc., 333 East Grace Street, Richmond, VA 23219, or to such other Persons or addresses as Grantee may subsequently specify by notice.

(i) *Time of Essence.* In determining whether a party has substantially complied with this Franchise Agreement, the parties agree that time is of the essence.

(j) *Captions and Headings.* The captions and headings of sections set forth herein are intended solely to facilitate reading and reference to the sections and provisions of this Franchise Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

(k) *No Oral Modifications.* This Franchise Agreement shall not be changed, modified or amended, in whole or in part, unless an appropriate written instrument is executed by the County and the Grantee.

(l) *Rights and Remedies.*

(1) The rights and remedies reserved to both parties herein are cumulative and shall be in addition to all other rights and remedies which either party may have with respect to the subject matter of this Agreement, whether reserved herein or authorized by applicable law.

(2) The following violations by the Grantee of this Agreement are material for purposes of Section 11(f)(2):

- (A) Transfer without approval pursuant to Section 3, or failure to notify pursuant to Section 3(e);
- (B) repeated or flagrant failure to satisfy line extension requirements pursuant to Section 4(b);
- (C) substantial failure to provide Cable Service as specified in Section 4(c)(8)(A);
- (D) repeated or flagrant failure to satisfy construction standards pursuant to Section 5;
- (E) substantial failure to meet system or institutional network upgrade schedule pursuant to Section 6(f) or the schedule for I-Net construction, if applicable, as specified in Appendix 2;
- (F) repeated or flagrant failure to meet FCC technical standards;
- (G) failure to maintain the Emergency Alert System pursuant to Section 6(j) in the event of an emergency;
- (H) substantial failure to provide Total Grants pursuant to Section 7(c);
- (I) substantial failure to provide PEG facilities or equipment pursuant to Section 7(a);
- (J) substantial failure to provide PEG facilities or equipment pursuant to Section 7(d);
- (K) substantial failure to provide PEG facilities or equipment pursuant to Section 7(f);

(L) if applicable, substantial failure to provide I-Net facilities or equipment pursuant to Section 7(k);

(M) substantial failure to pay Franchise fees pursuant to Section 8;

(N) repeated or flagrant failure to meet reports and records requirements in a timely manner pursuant to Section 9;

(O) substantial failure to satisfy insurance requirements pursuant to Section 10(a);

(P) substantial failure to maintain a bond or Security Deposit pursuant to Section 11;

(Q) repeated or flagrant violation of consumer protection requirements pursuant to applicable law;

(R) repeated or flagrant violation of Subscriber privacy requirements pursuant to 47 U.S.C. § 551 or other applicable law;

(S) repeated or flagrant discrimination among Subscribers in violation of applicable law.

(m) *Obligations to Continue Throughout Term.* Unless specifically designated otherwise, all of the Grantee's obligations under this Agreement and the Franchise shall continue throughout the entire term specified in Section 2(c) or any extension hereof.

(n) *Cooperation in Obtaining and Implementing Grants.* The Grantee and the County agree to cooperate fully with each other in applying for or implementing any federal or state grants or other funds to be applied to the Grantee's Cable System.

(o) *Prohibition Against Discrimination.* The Grantee shall adhere to the Equal Employment Opportunity regulations of the FCC and to all federal, state and local laws, and executive orders pertaining to discrimination, equal employment opportunity and affirmative action that are applicable to the Grantee.

(p) *Connections to the Cable System; Use of Antennas.*

(1) To the extent consistent with federal law, Subscribers shall have the right to attach devices to the Grantee's Cable System to allow them to transmit signals or service to video cassette recorders, receivers and other terminal equipment, and to use their own remote control devices and converters, and other similar equipment, so long as such devices do not interfere with the operation of Grantee's Cable System, or the reception of any cable Subscriber, nor serve to circumvent the Grantee's security procedures, nor for any purpose to obtain services illegally. The Grantee shall provide information to consumers which will allow them to adjust such devices so that they may be used with the Grantee's Cable System.

(2) The Grantee shall not, as a condition of providing Cable Service, require a Subscriber to remove any existing antenna or disconnect an antenna, or prohibit or discourage a Subscriber from installing an antenna switch, provided that such equipment and installations are consistent with applicable codes and technically able to shield Grantee's Cable System from any interference.

(q) *Police Powers of the County.* Nothing in this Agreement shall preclude the County from exercising its police powers to enact, amend or supplement any law or regulation governing cable communications within the County of Fairfax.

(r) *Grantee Bears Its Own Costs.* Unless otherwise expressly provided in this Agreement, all acts that the Grantee is required to perform must be performed at the Grantee's own expense.

(s) *County Bears Its Own Costs.* Unless otherwise expressly provided in this Agreement, all acts that the County is required to perform must be performed at the County's own expense.

(t) *Rights of Third Parties.* Nothing herein shall be construed to give any Person other than the Grantee or the County a right to assert any claim or cause of action against the Grantee or the County, its employees, elected or appointed officials, officers, commissions, commissioners, boards or agents, except as to parties enumerated in Section 7(c)(2).

(u) *Appendices.* The appendices to this Agreement (the "Appendices"), attached hereto, and all portions thereof and exhibits thereto, are, except as otherwise specified in such Appendices, incorporated herein by reference and expressly made a part of this Agreement. The procedures for approval of any subsequent amendment or modification to said Appendices shall be the same as those applicable to any amendment or modification hereof, except as specified in such Appendices or elsewhere in this Agreement.

(v) *Entire Agreement.* This Agreement embodies the entire understanding and agreement of the County and the Grantee with respect to the subject matter hereof and merges and supersedes all prior representations, agreements, and understandings, whether oral or written, between the County and the Grantee with respect to the subject matter hereof, including, without limitation, any and all written or oral statement or representations by any official, employee, agent, attorney, consultant, or independent contractor of the County or the Grantee.